

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Crim. Action No.: 2:19-CR-22
(Judge Kleeh)**

TIMOTHY JUSTON WIMER,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 101],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING**

On November 19, 2019, the Defendant, Timothy Juston Wimer ("Wimer"), appeared before United States Magistrate Judge Michael J. Aloi and moved for permission to enter a plea of **GUILTY** to Count One and Count Eight of the Indictment. Wimer stated that he understood that the magistrate judge is not a United States District Judge, and Wimer consented to pleading before the magistrate judge. This Court referred Wimer's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Wimer's statements during the plea hearing, and the Government's proffer establishing that an independent factual

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 101],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING**

basis for the plea existed, the magistrate judge found that Wimer was competent to enter a plea, that the plea was freely and voluntarily given, that Wimer was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 101] finding a factual basis for the plea and recommending that this Court accept Wimer's plea of guilty to Count One and Count Eight of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Wimer nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 101], provisionally **ACCEPTS** Wimer's guilty plea, and **ADJUDGES** him **GUILTY** of the crimes charged in Count One and Count Eight of the Indictment.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 101],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING**

it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Wimer, and prepare a presentence investigation report for the Court;

2. The Government and Wimer shall each provide their narrative descriptions of the offense to the Probation Officer by **December 13, 2019**;

3. The presentence investigation report shall be disclosed to Wimer, his counsel, and the Government on or before **February 11, 2020**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e) (3);

4. Counsel may file written objections to the presentence investigation report on or before **February 25, 2020**;

5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **March 6, 2020**; and

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 101],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING**

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **March 6, 2020.**

The magistrate judge remanded Wimer to the custody of the United States Marshals Service.

The Court will conduct the **Sentencing Hearing** for Wimer on **Thursday, April 9, 2020, at 11:30 A.M., at the Elkins, West Virginia point of holding court.**

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: December 6, 2019

/s/ Thomas S. Klee
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE